

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

SCHMALZ INC.,

Plaintiff,

v.

BETTER VACUUM CUPS INC.,

Defendant.

Case No. 2:16-cv-10040-GAD-SDD

Hon. Gershwin A. Drain

Magistrate Judge Stephanie Dawkins Davis

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**STIPULATED CONSENT ORDER
AND DISMISSAL WITH PREJUDICE**

The parties having stipulated and agreed as follows:

1. This is a patent infringement case where Plaintiff Schmalz, Inc. (“Schmalz”) sued Defendant Better Vacuum Cups, Inc. (“BVC”) for alleged infringement of U.S. Patent No. 6,364,299 (the ’299 patent) titled “Vacuum Holding Apparatus.”

2. The '299 patent issued on April 2, 2002 and is due to expire on June 29, 2020.

3. BVC's products accused by Schmalz of infringing the '299 patent include but is not limited to: HH114160K1.50, HH11486K1.50, HH11449K1.50, MM114160K1.50, MM11486K1.50, MM11449K1.50, MM45160K1.50, FSH 50114160K1, FSH5011499K1, FSH5011486K1, and FSH5045160K1, and whether or not the locator legs have inward facing protrusions (the "Accused Products"). To remove all doubt, "Accused Products" shall not include K-2 style vacuum cups or any component parts for K-2 style vacuum cups.

4. BVC denies any of the Accused Products infringe the '299 patent. In addition, BVC denies any and all liability claims arising from any and all Schmalz's allegations that the Accused Products infringe the '299 patent. This Stipulated Consent Order is entered only to resolve the above-captioned litigation and shall not be construed as any admission of any liability or that any of the Accused Products infringe the '299 patent.

5. The parties have reached a settlement of this matter and have entered into a confidential Settlement Agreement.

6. BVC has agreed that it will not individually or in cooperation with others make, use, sell, import or offer for sale vacuum cups having clamping levers used to attach the cups to a base. To be clear, the effect of this provision is that BVC

shall exit the market with respect to the K-1 style vacuum cups during the life of the '299 patent. BVC may continue to sell component parts for non-Accused Products, including K-2 style vacuum cups. Within thirty (30) days of the Effective Date, BVC will destroy any unsold or undelivered inventory of the Accused Products.

7. The parties agree to dismissal of this case with prejudice and without costs to either party with the court retaining jurisdiction over any dispute relating to this Order or the Settlement Agreement between the parties.

NOW THEREFORE it is ordered that this action is dismissed with prejudice and without costs with the court retaining jurisdiction over this Order and any dispute relating to the Settlement Agreement between the parties.

SO ORDERED.

Dated: January 24, 2018

s/Gershwin A. Drain

Hon. Gershwin A. Drain
U.S. District Judge

Stipulated and agreed to by the parties,

HOWARD & HOWARD ATTORNEYS PLLC

PANAGOS LAW GROUP PLLC

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Dated: January 23, 2018